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ARCH WIRELESS, INC. AND METROCALL HOLDINGS, INC. SEEK FCC CONSENT TO TRANSFER CONTROL OF LICENSES AND AUTHORIZATIONS

WT Docket No. 04-171

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: June 9, 2004
Oppositions Due: June 21, 2004
Replies Due: June 28, 2004

I. INTRODUCTION

Arch Wireless, Inc. ("Arch") and Metrocall Holdings, Inc. ("Metrocall") (collectively, "the Applicants") have filed applications pursuant to Section 310(d) of the Communications Act of 1934, as amended.¹ In these applications, the Applicants seek Commission approval of the transfer of control of licenses and authorizations held by subsidiaries of Arch and Metrocall to a newly-formed company, Wizards-Patriots Holdings, Inc. ("Newco").² This transfer of control will take place as a result of a proposed transaction between Arch and Metrocall, whereby the licensee entities of the Applicants will become wholly-owned subsidiaries of Newco, which will be majority owned and controlled by Arch's existing shareholders.³ These transfer of control applications pertain to licenses for the Part 22 Paging and Radiotelephone Service, the Part 24 Narrowband Personal Communications Service, the Part 25 Satellite Earth Station Service, the Part 90 Private Carrier Paging, Industrial/Business Pool and Public Safety Services, and the Part 101 Public Safety and Private Operational Fixed Point-to-Point Microwave Services.

¹ 47 U.S.C. §§ 214, 310(d).

² The name of the company will be chosen sometime prior to closing; for the time being, it has been incorporated under the name Wizards-Patriots Holdings, Inc. See Application No. 0001701168, Exhibit One, at 4 n.6.

³ See Wizards-Patriots Holdings, Inc., FCC Ownership Disclosure Form 602 (filed Apr. 14, 2004); Metrocall USA, Inc., FCC Ownership Disclosure Form 602 (filed Apr. 13, 2004). The Applicants state that Arch's license-holding subsidiaries will file *pro forma* transfer of control notifications in connection with certain wireless licenses, pursuant to the Commission's forbearance procedures, after the transaction is consummated.

II. DESCRIPTION OF TRANSACTION

These transfer of control applications were filed in connection with the proposed merger of Arch's and Metrocall's operations. The Applicants state that, pursuant to the Agreement and Plan of Merger, the shareholders of Metrocall will receive \$150 million in cash and shares in Newco in exchange for their existing Metrocall shares. Post-transaction, the Applicants state that Arch's existing shareholders will own approximately 72.5% of Newco, and Metrocall's shareholders will own the remaining 27.5%.⁴ The Applicants further state that no shareholder currently owns more than 10% of Arch, and no shareholder of Arch or Metrocall will own more than 10% of Newco.⁵ With respect to governance, the Applicants state that Newco's board of directors will be initially composed of four members each from the current Arch and Metrocall boards, and one individual who is now a substantial shareholder of Arch. The Applicants state that there is no voting rights agreement or any other extraordinary restriction on the board's composition. Following consummation of the proposed transaction, management of Newco will be led by Metrocall's current President and CEO, who will serve as President, CEO, and as a member of the board.

III. SECTION 310(d) APPLICATIONS

A. Non-Pro Forma Applications

The following applications for consent to the transfer of control of the licenses from Metrocall to Newco have been assigned the file numbers listed below.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001701168 ⁶	Metrocall USA, Inc.	KAA276
0001701432	Metrocall USA, Inc.	KNNF697
50005CWTC04 ⁷	Metrocall USA, Inc.	KNKV210

⁴ The percentages may vary slightly, based on the extent of cash elections made by Metrocall's shareholders at or prior to the closing of the transaction. Nonetheless, the Applicants represent that Arch's existing shareholders will hold majority equity in, and control of, Newco.

⁵ The shares of both Arch and Metrocall are both publicly traded, and their ownership therefore remains subject to change.

⁶ File No. 0001701168 has been designated as the lead application, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular application will be available through this file number in the Wireless Telecommunications Bureau's Universal Licensing System ("ULS") at <http://wireless.fcc.gov/uls/>.

⁷ This application is attached to File No. 0001701168. This application seeks consent for the transfer of control of licenses, from Metrocall to Newco, currently held by PageMart II Holdings, LLC and PageMart PCS Holdings, LLC, each of which are subsidiaries of WebLink Wireless, Inc. ("WebLink"). As background, the WebLink licenses are the subject of two pending assignment of license applications pursuant to which WebLink seeks Commission consent to assign its licenses to Metrocall. See ULS File Nos. 0001525608 and 0001525609. Since the applications assigning licenses from WebLink to Metrocall have been consented to by the Commission but have not been consummated by the parties, the licenses are not shown as belonging to Metrocall in ULS. Thus, this application was filed manually with a request for waiver of the ULS electronic filing requirement, pursuant to section 1.913(b) of the Commission's rules. 47 C.F.R. § 1.913(b). We grant the parties' request for waiver of the ULS filing requirement. Inasmuch as the Applicants anticipate that the WebLink transaction will close before the instant transaction, the purpose of this application is to obtain Commission consent to transfer control of the WebLink

These applications will not be subject to the Wireless Telecommunications Bureau's streamlined processing procedures.⁸

B. Non-Pro Forma Application – Part 25 Satellite Earth Station Services

The following application for consent to the non-*pro forma* transfer of control of various Satellite Earth Station licenses from Metrocall to Newco has been assigned the file number listed below.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
SES-T/C-20040413-00586	Metrocall USA, Inc.	E980497 ⁹

C. Pro Forma Applications – Part 25 Satellite Earth Station Services

The following applications for consent to the *pro forma* transfer of control of various Satellite Earth Station licenses from Arch to Newco have been assigned the file numbers listed below.

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
SES-T/C-20040413-00547	Arch Wireless License Co., LLC	E960014
SES-T/C-20040413-00546	Arch Wireless License Co., LLC	E980420

These applications appeared on Public Notice on April 21, 2004.¹⁰ This Public Notice extends the pleading cycle established in the April 21, 2004 Public Notice to the pleading cycle dates established herein.

IV. EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,¹¹ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.¹²

licenses from Metrocall to Newco.

⁸ See 47 C.F.R. § 1.948(j).

⁹ This *pro forma* transfer application also includes Earth station call sign E960163; however, this authorization was surrendered on June 6, 2002 and cancelled by the Commission on June 12, 2002. See Satellite Communications Services Information Re: Actions Taken, *Public Notice*, Report No. SES-00400 (IB rel. June 12, 2002). We note that Metrocall subsequently sought reconsideration of the cancellation of E960163, but no action was taken by the Commission to reinstate the authorization. We advise the parties to file a new application requesting authorization for this Earth station.

¹⁰ See Satellite Communications Services Re: Satellite Radio Applications Accepted for Filing, *Public Notice*, Report No. SES-00597 (IB rel. Apr. 21, 2004)

¹¹ 47 C.F.R. § 1.1200(a).

¹² *Id.* § 1.1206.

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.¹³ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁴ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹⁵ We urge parties to use the Electronic Comment Filing System ("ECFS") to file *ex parte* submissions.¹⁶

V. GENERAL INFORMATION

The transfer of control applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.¹⁷

Interested parties must file petitions to deny no later than **June 9, 2004**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **June 21, 2004**. Replies to such pleadings must be filed no later than **June 28, 2004**. All filings concerning matters referenced to in this Public Notice should refer to **DA 04-1289** and **WT Docket No. 04-171**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,¹⁸ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**¹⁹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the

¹³ See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd. 19,945 (2000).

¹⁴ See 47 C.F.R. § 1.1206(b)(2).

¹⁵ *Id.* § 1.1206(b).

¹⁶ See discussion *infra* Part V.

¹⁷ See 47 U.S.C. § 309(b).

¹⁸ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd. 21,483 (2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd. 22,165 (2001); Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, 18 FCC Rcd. 16,705 (2003).

¹⁹ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd. 11,322 (1998).

following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); (2) Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at susan.singer@fcc.gov, or (202) 418-7447 (facsimile); (4) Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at kathy.harris@fcc.gov, or (202) 418-7447 (facsimile); (5) Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at linda.ray@fcc.gov, or (202) 418-7447 (facsimile); (6) Jeff Tobias, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at jeff.tobias@fcc.gov, or (202) 418-2643 (facsimile); (7) JoAnn Lucanik, Satellite Division, International Bureau, at joann.lucanik@fcc.gov or (202) 418-1460 (facsimile); and (8) Kimberly Reindl, Office of General Counsel, at kimberly.reindl@fcc.gov, or (202) 418-2822 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. In addition, applications filed under Parts 22, 24, 90 and 101 of the Commission's rules are available electronically through ULS, which may be accessed on the Commission's Internet website. Additional information regarding the transaction will be available on the FCC's Office of General Counsel's website, <http://www.fcc.gov/ogc>, which will contain a fully indexed, unofficial listing and electronic copies of all materials in this docket. Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to access@fcc.gov.

For further information, contact Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-2042, or Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-1340.

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